(1)

Supreme Court, U.S.
FILED

932096 JUN 27 1994

OFFICE OF THE CLERK
NO. OFFICE OF THE CLERK

SUPREME COURT

OF THE UNITED STATE

JUNE TERM, 1994

Robert Bonser,

Petitioner

v.

Town of Nottingham, New Hampshire

Respondent

PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME COURT OF

NEW HAMPSHIRE

PETITION FOR WRIT OF CERTIORARI

Terry L. Bonser, Pro Se
24 Smoke St.
Nottingham, NH 03290
(603) 679-2036

Mary L. Parks Bonser, ProSe
(same)

25 pp

QUESTIONS PRESENTED

1. Where the New Hampshire Supreme Court is a state court of last resort, in a single-tiered appellant system, should the New Hampshire Supreme Court have heard this matter and determined if in fact the civil contempt had been converted to criminal contempt in the lower court equity proceedings, without the lower court following the proper procedural steps, before declining to hear this matter?

2. Should the New Hampshire Supreme Court have at least requested and reviewed the record of the lower court proceedings, prior to declining Petitioners' Notice of Appeal?

3. Did the state courts convert the civil contempt, in this equity proceeding, into criminal contempt without following the proper procedural steps, and if so, should the contempt be set aside?

THE PARTIES

The Petitioners:

Intervenor Cedar Waters Village Partnership, pro se, by all of its partners, Terry L. Bonser, pro se and Mary L. Parks Bonser, pro se, 24 Smoke St., Nottingham, NH 03290. Please see, Motion For Substitution Due To Death Of Party, dated June 27, 1994, filed simultaneously with this Petition.

The Respondents:

Plaintiff Town of Nottingham, a political subdivision of the State of New Hampshire, by its counsel of record, Mark Gearreald, Esq., P.O. Box 278, Exeter, NH 03833.

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PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME COURT OF

NEW HAMPSHIRE

Petitioners, Intervenor Cedar Waters Village Partnership, pro se, by all of its partners, Terry L. Bonser, pro se and Mary L. Parks Bonser, pro se respectfully request that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of New Hampshire entered in the above-entitled cause on December 13, 1993, Motion To Reconsider denied on January 28, 1994, both in New Hampshire Supreme Court case no. 93-557, Town of Nottingham v. Robert A. Bonser & a. These orders and Motion are reproduced in the Appendix to this Petition.

OPINIONS BELOW

The prior opinions of the New Hampshire Supreme Court pertinent to this Petition and the judgment under review, is a one page memorandum order, dated November 18, 1992 in the State case captioned Town of Nottingham v. Robert A. Bonser, and numbered 90-424. This order is set forth in the Appendix to this Petition.

The judgment in this case consisted of a one paragraph declination order, under Rule 7 (1), entered by the New Hampshire Supreme Court on December 13, 1993, which became final when Petitioners' Motion For Reconsideration was denied by the New Hampshire Supreme Court's one paragraph order, dated January 28, 1994, in Town of Nottingham v. Robert A. Bonser & a., 93-557. All of the orders above, Rule 7 (1) and

Motion For Reconsideration, dated December 22, 1993, above, are set forth in the Appendix to this Petition.

JURISDICTION

The judgment of the Supreme Court of New Hampshire declining to hear this matter, without benefit of the transcript of the proceedings below, was entered on December 13, 1993 and became final when Petitioners' Motion For Reconsideration was denied on January 28, 1994, in 93-557, supra.

By Order of this Court (Souter, J.) in case numbered A-824, the time for filing this Petition was enlarged to include June 27, 1994.

This Petition is timely filed.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1257 (a) and 2101 (c), and Rule 10.1 (b) and (c), and whereas Petitioners are unable to

obtain impartial trial, or meaningful appellate review, in the state courts of New Hampshire.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This Petition involves the Due Process Clause of the Bill of Rights of the United States Constitution, as well as the New Hampshire State Constitution's guarantees regarding Due Process of Law.

New Hampshire Supreme Court Rule 7 (1), supra, whereas by law, Court Rules in New Hampshire have the full force and effect of statute law, Article 73-a, Part 2, New Hampshire Constitution.

STATEMENT OF THE CASE

A. SUMMARY OF THE PERTINENT FACTS

This matter stems from a finding of civil contempt against the named defendants, not your Petitioners, in the Rockingham County Superior Court case, Town of Nottingham v. Robert A. Bonser et al., E-438-81. See, Motion For Substitution Due To Death Of Party, dated June 27, 1994, submitted simultaneously with this Petition. Recently, since the original finding of civil contempt, Defendants and Petitioners have asserted that the lower court has converted the original finding of civil contempt, based on the superior court's stated purpose of the punishment, into criminal contempt without affording any of the defendants (now deceased) or Petitioners Due Process of Law.

The basic facts necessary for a determination of the questions presented in this Petition are not in

dispute, but are contained in the official court record, as follows:

(a) By its order dated June 14, 1993, in Town of Nottingham v. Robert A. Bonser et al., case no. E-438-81, the lower court (McHugh, J.) stated, that to fail to further "punish[ed]" defendants by not ordering defendants to pay a penalty to the court, who is not a party to this civil contempt case, "would demean the integrity of the court, and would constitute an open invitation to any person to ignore court orders and fear no reprisal...". This ruling in and of itself clearly converts the civil contempt in this matter to criminal, and neither defendants nor Petitioners were ever afforded Due Process of Law, as a result of the court's conversion of the contempt. The above referenced order is set forth in the Appendix to this Petition.

(b) New Hampshire state cases all agree with federal cases in this matter that, "[i]n civil contempt, the punishment is remedial, coercive, and for the benefit of the complainant...[t]he purpose of prosecution for criminal contempt is to protect the authority and vindicate the dignity of the court", Town of Nottingham v. Cedar Waters, Inc., 118 NH, 282, 285 (1978), using Stern v. Chandler, 153 Me. 62, 134 A2.d 550 (1957).

(c) Plaintiff agreed in its Motion, "that accumulated fines in excess of costs and attorney's fees are now to be "payable to the court" is to convert this case to criminal as opposed to civil contempt". Town's Motion For Partial Reconsideration, dated November 30, 1992, in New Hampshire Supreme Court case 90-424 and is set forth in Appendix to this Petition. Town's Motion was denied by a one line Order of New Hampshire Supreme Court, dated December 17, 1992.

(d) The lower court (McHugh, J.) admits, in its June 14, 1993 order, supra, that it was "couch[ing]", or hiding "an appropriate penalty...in terms of a fine payable to the court.", thereby circumventing the New Hampshire Supreme Court's Order in Town of Nottingham v. Robert A. Bonser and Cedar Waters Village, Inc., 131 NH, 120, 137 (1988), "it is not the proper business of municipalities to profit from violations of their land use regulations, or the proper business of the judiciary to allow them to do so", and also the lower court, by these remarks, appeared to admit it was intentionally circumventing and denying Petitioners right to Due Process of Law in this now criminal contempt proceeding.

(e) And, the lower court stated, in the June 14, 1993 order, supra, that, "the punishment should fit the crime" (emphasis added), when it was discussing

lowering the 1.5 million dollars in fines and penalties it (the lower court) had already awarded to Plaintiff Town, by its July 20, 1990 order, down to $306,214.98, payable now for the first time to the court and Plaintiff. The 1.5 million dollar award to Plaintiff had been "Reversed and remanded" by the New Hampshire Supreme Court in its Order dated November 18, 1992 in 90-424, supra, and which 1.5 million dollar award, the lower court had made in defiance of the Supreme Court's Order in Town of Nottingham v. Bonser, 131 NH 120, 137, 552, A.2d 58, 68 (1988).

(f) Further clouding the distinction between civil and criminal contempt in this matter is that the lower court, by its January 23, 1993 Order in E-438-81, actually allowed Plaintiff to perform discovery for the court, to discover how much fines and penalties Defendants could afford to pay to the court and Plaintiff.

Defendants and Petitioners rigorously opposed this collusion between the lower court and Plaintiff and eventually the lower court vacated that portion of its original order. Petitioners' Motion To Reconsider Order Dated January 21, 1993, in E-438-81, is set forth in the Appendix to this Petition.

(g) The Supreme Court of New Hampshire declined to hear this matter on December 13, 1993, and Petitioners' Motion To Reconsider denied January 28, 1994, supra, all without hearing or even requesting and reviewing the transcript of the proceedings below.

(h) Petitioners simultaneously filed writ of certiorari explains in detail the lower courts' prejudicial behavior towards the Petitioners.

B. PROCEEDINGS BELOW

Based on the Supreme Court's Order, dated November 18, 1992, in 90-424, supra, Plaintiff's Motion For Partial Reconsideration denied on December 17, 1992, in 90-424, supra, the superior court (McHugh J.), by its June 14, 1993 order, awarded to Plaintiff Town $122,364.98, "it [the lower court] finds that the Defendants are responsible for all of the Town's expenditures for legal fees, even for those periods of time when defendant, Robert Bonser, was not technically in contempt of any court order. The "consideration" for this more expansive order regarding the reimbursement of costs and fees is the reduction of the penalty portion of this Court's July 20, 1990 order,". It is clear from the court's (McHugh, J.) statement that the court is subverting or hiding a penalty/profit within the costs and attorney's fees portion of the award to

Plaintiff Town, in direct defiance of the New Hampshire Supreme Court's 1988 Order in Town of Nottingham v. Robert A. Bonser and Cedar Waters Village, Inc., supra., the November 18, 1992 Order in 90-424, supra, and the New Hampshire Constitution, Part 1, Article 14.

Based on the November 18, 1992 Order in 90-424, the lower court, for the first time in the history of this case, awarded to itself , the court - who is not a party to this matter, the unlitigated amount of $183,850.00., because to do otherwise, "would demean the integrity of the Court, and would constitute an open invitation to any person to ignore court orders and fear no reprisal...".

The lower court admitted in the June 14, 1993 order, supra, that, "the defendants will probably have to sell a portion of their real estate or mortgage it in order to get the funds necessary to pay the amounts

ordered." Petitioners appeal to this Court for hearing, as it would be a travesty of justice to allow the lower court's orders to stand in the circumstance of this matter, as Petitioners operate a small, primarily seasonal, family business, that already pays to Plaintiff Town nearly $35,000./year, or one-half of the net income of the business, in property tax.

REASONS FOR GRANTING THE WRIT

Without a determination from a court that this matter has been converted from a civil contempt proceeding to criminal contempt, Petitioners are without access to the courts and are denied all semblance of Due Process of Law.

It is clear from the record that the civil contempt in this matter was converted to criminal without the lower court following the proper procedural steps,

something that the Appellate Courts have clearly ruled is a Due Process violation, Stern v. Chandler, supra. However, no matter how good a law is and no matter how good a ruling from a courts is, it is of absolutely no value if Petitioners are unable to have their cause heard. The New Hampshire case, Bundy v. Wilson, 815 F.2d 125 (1st Cir. 1987) applies in this matter as the record clearly shows that the civil contempt has been converted to criminal.

CONCLUSION

For all the foregoing reasons Petitioners request that this Court review the merits of this matter by granting this Petition For Writ of Certiorari; and/or

Grant to Petitioners such other and further relief as may be right and just.

Petitioners also request that this Court allow Petitioners to correct any deficiencies in the Petition, if any are found, without prejudice.

The Petitioners thank this Court for its kind consideration of this matter.

Respectfully submitted,

Cedar Waters Village
Partnership, pro se
By all of its partners, pro se:

June 27, 1994

Terry L. Bonser, Pro Se
24 Smoke St.
Nottingham, NH 03290
(603) 679-2036

Mary L. Bonser
Mary L. Parks Bonser,
Pro Se
(same)

AFFIDAVIT OF FILING AND SERVICE

I hereby declare under penalty of perjury that I filed the requisite number of copies of this Petition with the Court by mailing the same, first class, postage prepaid, from New Hampshire on June 27, 1994.

At the same time, I mailed the requisite number of copies hereof to opposing counsel, Mark Gearreald, Esq., P.O. Box 278, Exeter, NH 03833, and curtesy copies to the New Hampshire Supreme Court, Noble Drive, Concord, NH 03301, also by first class mail, postage prepaid.

Mary L. Bonser
Mary L. Parks Bonser

Terry L. Bonser
Terry L. Bonser

STATE OF NEW HAMPSHIRE
COUNTY OF _____

Then came the above-named Terry L. Bonser Mary L. Bonser both personally known to me, and affirmed that the foregoing affidavit of filing and service signed by him/her was true and correct, under penalty of perjury.

June 27, 1994

Angie Deschenes
~~Notary Public~~/Justice of the Peace

My Commission Expires 9/27/94